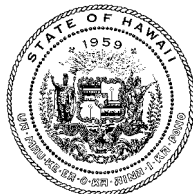


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February 17, 1998

## **TAX INFORMATION RELEASE NO. 98-1**

**RE:** Income Tax Exemption and Credits Available for Persons Engaged in the Motion Picture and Television Film Production Business

Section 235-9, Hawaii Revised Statutes (HRS), exempts from the Hawaii income tax persons engaged in the motion picture or television film production business. Section 235-17, HRS, provides for persons engaged in the motion picture or television film production business a refundable income tax credit of up to four percent of the costs incurred in Hawaii in the production of a motion picture or television film and a refundable income tax credit of up to six percent of the transient accommodations costs incurred in Hawaii in the production of a motion picture or television film which benefits Hawaii's economy.

The exemption and credits are applicable to taxable years beginning after December 31, 1996.

### **I. Definitions.**

For purposes of sections 235-9 and 235-17, HRS, the following definitions are applicable:

"Benefits" means promoting Hawaii, creating jobs and business opportunities in Hawaii in the motion picture and television film industry, and costs incurred in Hawaii by a person engaged in the motion picture or television film production business.

"Costs incurred in Hawaii" means the actual expenditures for production costs and transient accommodations costs paid where the person delivering the goods in Hawaii or performing the services in Hawaii is subject to the Hawaii general excise tax or transient accommodations tax.

"Motion picture or television film" means a feature-length motion picture intended for theatrical release or for exhibition on national television by a network or through national syndication or a television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy services televised on a network or through national syndication which has been certified by the Film Industry Branch of the Department of Business, Economic Development and Tourism. Among the requirements for certification is an estimate of the total costs that will be incurred in Hawaii. "Motion picture or television film" does not include news programs, sports programs, and commercials.

“Production costs” means the actual expenditures for costs incurred in Hawaii during the production of a motion picture or television film.

“Transient accommodation costs” mean the actual expenditures paid to an operator of transient accommodations, as defined in chapter 237D, HRS and the rules, in Hawaii during the production of a motion picture or television film.

## **II. Qualifying for the income tax exemption and credits.**

In order to qualify for the income tax exemption, a person (1) engaged in the motion picture or television film production business (2) must produce a motion picture or television film (3) in Hawaii.

In order to qualify for the income tax credits, a person (1) engaged in the motion picture or television film production business (2) must incur costs in Hawaii (3) while producing a motion picture or television film (4) which benefits Hawaii.

## **III. Amount of credits.**

Act 107, Session Laws of Hawaii 1997, specifies the maximum allowable tax credits, up to four percent of the production costs and six percent of the transient accommodations costs, when the production provides greater benefits to Hawaii’s economy.

A person engaged in the motion picture or television film production business, therefore, may claim the maximum four percent refundable income tax credit for production costs incurred in Hawaii and the maximum six percent refundable income tax credit for transient accommodations costs incurred in Hawaii while producing a motion picture or television films under the following circumstances:

- The motion picture or television film has a Hawaiian name of a place, Hawaiian proper name, or Hawaiian word in its title, including, “Hawaii,” “Waikiki,” “Diamond Head,” “Honolulu,” “Maui,” “Kauai,” “Molokai,” “Lanai,” “Pearl Harbor,” or “Aloha;”
- The motion picture or television film promotes and advertises Hawaii by using Hawaiian scenery, culture, or products;
- The person spends at least two million dollars in Hawaii to produce a motion picture film during the applicable tax year or at least \$750,000 in Hawaii to produce a television pilot, movie of the week, or episode for a television series during the applicable tax year; and
- The motion picture or television film has a minimum of 66 percent national United States or Japan coverage, based on EDI for motion picture films and Nielson for television films. Allowable substitutions include satisfactory evidence of a domestic or foreign distribution agreement in the case of motion picture films and television films or, in the case of a television pilot, a letter of intent from a network that the network will consider the television pilot for future pick-up.

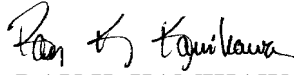
A person engaged in the motion picture or television film production business may claim 75 percent of the maximum tax credits (i.e., 75 percent of the four percent credit for production costs and six percent credit for transient accommodations costs) under the following circumstances:

- The person spends at least three million dollars in Hawaii to produce a motion picture film during the applicable tax year or at least one million dollars in Hawaii to produce a television pilot, movie of the week, or episode for a television series during the applicable tax year;
- Fifty percent of “below the line” positions are provided to Hawaii residents. “Below the line” positions means the technical and craft positions. It does not include executive or creative positions, including, writing, directing, producing, or acting positions; and
- The motion picture or television film has a minimum of 66 percent national United States or Japan coverage, based on EDI for motion picture films and Nielson for television films. Allowable substitutions include satisfactory evidence of a domestic or foreign distribution agreement in the case of motion picture films and television films or, in the case of a television pilot, a letter of intent from a network that the network will consider the television pilot for future pick-up.

The tax credits shall be reduced or may not be allowed by the Department of Taxation if the person claiming the tax credits does not fulfill the requirements of sections 235-9 and 235-17, HRS, and this Tax Information Release.

#### **IV. Claiming the credits.**

The credits must be claimed, including an amended claim, on an income tax return filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. An extension of time for filing an income tax return does not extend the time for claiming the credits. Failure to comply with the filing requirements shall constitute a waiver of the right to claim the credits.

  
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Director of Taxation

HRS Sections Explained: HRS Sections 235-9 and 235-17